
OLR Bill Analysis

sHB 6641 (as amended by House "A")*

AN ACT CONCERNING THE SEXUAL ASSAULT OF A PERSON WHO IS PHYSICALLY HELPLESS OR WHOSE ABILITY TO CONSENT IS OTHERWISE IMPAIRED.

SUMMARY:

This bill adds to and updates certain factors for determining guilt in cases of 2nd and 4th degree sexual assault involving a person with a physical or mental disability.

Under current law, it is 2nd degree sexual assault to have sexual intercourse, or 4th degree sexual assault to have intentional sexual contact, with someone who is (1) physically helpless or (2) "mentally defective" and consequently unable to consent. The bill expands the definition of physically helpless for these purposes to include someone who is physically unable to resist an act of sexual intercourse or sexual contact.

Existing law also includes within the definition of "physically helpless" someone who is unconscious or otherwise physically unable to communicate unwillingness to the act. As recently interpreted by the state Supreme Court, under the current definition, even total physical incapacity does not necessarily render someone physically helpless (see BACKGROUND).

The bill also eliminates references to "mentally defective" in these statutes and instead refers to "impaired because of mental disability or disease." It defines this term in a similar manner as the current definition for "mentally defective," except for updated terminology. Thus, under the bill, a person is "impaired because of mental disability or disease" if such a condition renders him or her incapable of appraising the nature of his or her conduct.

The bill also makes a conforming change.

*House Amendment "A" adds a definition for "impaired because of mental disability or disease."

EFFECTIVE DATE: October 1, 2013

BACKGROUND

Penalties and Affirmative Defense

Table 1 describes the penalties for 2nd and 4th degree sexual assault.

Table 1: Penalties for 2nd and 4th Degree Sexual Assault

<i>Crime</i>	<i>Penalty</i>
2 nd degree sexual assault	<u>Victim age 16 or older:</u> class C felony (up to 10 years in prison, a fine of up to \$10,000, or both) <u>Victim younger than age 16:</u> class B felony (up to 20 years in prison, a fine of up to \$15,000, or both) In either case, the law requires a mandatory minimum of nine months in prison
4 th degree sexual assault	<u>Victim age 16 or older:</u> class A misdemeanor (up to one year in prison, a fine of up to \$2,000, or both) <u>Victim younger than age 16:</u> class D felony (up to five years in prison, a fine of up to \$5,000, or both)

For sexual assault prosecutions based on the victim's mental or physical condition as described above, it is an affirmative defense that the defendant did not know of the victim's condition at the time of the offense. A defendant has the burden of proving an affirmative defense by the preponderance of the evidence.

Related Case

In a recent case, a woman with severe disabilities alleged that she had been sexually assaulted by her mother's boyfriend. The woman was nonverbal but was able to communicate in limited ways. The man was found guilty at trial, but his conviction was overturned on appeal. A majority of the state Supreme Court agreed with the Appellate Court that there was insufficient evidence to show that the victim was "physically helpless" within the meaning of the current definition of that term in the sexual assault statutes. The court noted that "even total physical incapacity does not, by itself, render an individual physically

helpless.” Rather, under the current statutes, the term applies only to someone who, “at the time of the alleged act, was unconscious or for some other reason physically unable to communicate lack of consent to the act” (*State v. Fourtin*, 307 Conn. 186 (2012)).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 44 Nay 0 (04/12/2013)